

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 03-0462P  
Tax Administration—Penalty  
For the Years 2000, 2001 &2002**

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**ISSUES**

**I. Tax Administration—Penalty**

**Authority:** 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

**STATEMENT OF FACTS**

The penalty was proposed in the first instance because the auditor determined taxpayer had not self-assessed and remitted use tax even though taxpayer was aware of its duty to do so. Taxpayer argued that it had been a good corporate taxpayer over the years and the clerical errors resulted in a very small percentage of purchases included in the audit.

**I. Tax Administration-Penalty**

**DISCUSSION**

Penalty assessments depend on a number of factors outlined in the statute and regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care because clerical omissions and/or mistakes constitute negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

**FINDING**

Taxpayer's request to abate the 10% negligence penalty is denied.